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| SERIAL NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTORNEY DOCKET NO. |
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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
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This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

DATE MAILED:

☒ This application has been examined ☐ Responsive to communication filed on ____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 months from the date of this letter.
Failure to respond within the time period will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENTS ARE PART OF THIS ACTION:

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449 | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-5 are pending in the application.
Of the above claims, ____ are withdrawn from consideration.
2. ☐ Claims ____ have been cancelled.
3. ☐ Claims ____ are allowed.
4. ☒ Claims 1-5 are rejected.
5. ☐ Claims ____ are objected to.
6. ☐ Claims ____ are subject to restriction or election requirement.
7. ☒ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on _____ has been ☐ approved. ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under 35 USC 119. The certified copy has ☐ been received ☐ not been received
☐ been filed in parent application, serial no. ____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

Serial Number: 08/487,461

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Art Unit: 1205

Claims 1-5 are presented for examination.

The amendment received on September 25, 1995 has been entered.

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

Art Unit: 1205

Claims 1-5 are rejected under 35 U.S.C. § 103 as being unpatentable over Facts and Comparisons (R), Guo (A), and Hope et al. (B).

The claims appear to be drawn to a composition comprising a neutral phospholipid such as a triglyceride or cholesteryl ester and a phospholipid. Facts and Comparisons teaches a composition containing triglycerides and egg yolk phospholipids. Egg yolk phospholipids are known to contain phosphatidylcholine (PC) thus meeting the requirements of claims 1-3. Guo teaches a composition containing cholesterol esters and PC (See col. 2, lines 35-41) thus meeting the requirements of claim 4. Hope et al. teaches a composition containing neutral lipids, PC, and sphingosine (see column 2, lines 43-55⁷ and column 4, lines 11-44), thus meeting the requirements of claim 5. The claims are prima facie obvious from the references as the claims differ only in the intended utility of the composition. However, a different intended utility is insufficient to distinguish composition claims from the prior art.

The remaining references listed on the enclosed PTO-1449 are cited to show the state of the art.

No claims are allowed.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly Jordan whose telephone number is (703) 308-4611. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.


KIMBERLY JORDAN
PRIMARY EXAMINER
GROUP 1200

JORDAN:jd
MARCH 08, 1996